

# **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(WESTERN DIVISION)

C.A. No.: 2011-CV-30199

**ROBERT BAGG, DAVID CROTTY,  
KATHLEEN GEISSE, CRYSTAL DILLON  
and LESLIE JOHNSTON Individually and  
on Behalf of All Other Persons Similarly  
Situated,**

## **Plaintiffs,**

V.

**HIGHBEAM RESEARCH, INC., THE  
GALE GROUP, INC., and CENGAGE  
LEARNING, INC.,**

## Defendants.

**AFFIDAVIT OF  
ROBYN DOCHERTY**

STATE OF ILLINOIS )  
COUNTY OF COOK ) ) ss.:

ROBYN DOCHERTY, being duly sworn, deposes and says:

1. I have worked for defendants in this action since 2004. Currently, I am Vice President of Operations for the Web Research Products Group of Cengage Learning, Inc. (“Cengage”). Prior to this position, I was Director of Operations at Cengage. From May 10, 2004, I was employed by HighBeam Research, Inc. (“HighBeam”) as its Financial Controller until HighBeam’s merger with Gale Group, Inc. in 2008, when I began working for Cengage. I have personal knowledge of the facts set forth herein.

2. I make this affidavit in support of defendants' informal production of information and documentation to plaintiffs following the Court's memorandum and order on defendants' motion to dismiss.

3. In my positions at both HighBeam and Cengage, I have overseen and continue to supervise the operations of the highbeam.com website (the “Website”). In this capacity, I have knowledge of and familiarity with the Website’s content and its functionality, including its user registration process and registered user accounts.

4. The Website contains a page entitled Terms and Conditions, which provides a copy of the Highbeam User Agreement (“User Agreement”). I am familiar with the User Agreement and regularly refer to it. I believe that the content of the User Agreement on the Website has not materially changed since 2006, except to update the business address stated in provisions 2.4 and 3.5.

5. Specifically, since 2006, there have been no changes to the User Agreement’s provision 11.1, under the section entitled Law Governing Performance and Disputes, which states:

This Agreement, your performance under it, any disputes arising under it shall be governed exclusively by the laws of the United States of America and the State of Illinois, without giving effect to their conflict of laws principles. You expressly consent to the exclusive forum, jurisdiction, and venue of the Courts of the State of Illinois in Cook County and the United States District Court for the Northern District of Illinois in any and all actions, disputes, or controversies relating to this Agreement.

6. The Website also includes a user registration process, which users must complete in order to activate a subscription to the Website and to access full copies of the articles and other publications contained on the Website.

7. The registration process contains several steps, including agreement with the User Agreement, which is indicated by the user clicking a box beside the statement “I agree to the Terms and Conditions.” (The underscored portion of this statement provides a link to the Website’s Terms and Conditions page.)

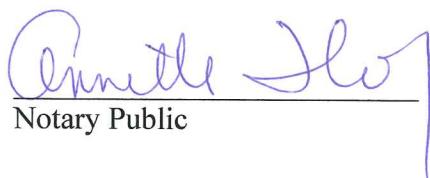
8. Since at least 2005, the Website's registration process has required that a user agree to the User Agreement, in the manner described above, in order to complete the registration process. The Website is designed, and has been designed since at least 2005, to prevent a user from completing the registration process unless the user clicks the box indicating that he or she agrees to the User Agreement. In other words, unless a user agrees to the User Agreement, by clicking the box confirming the user's assent, the user may not subscribe to the Website and cannot access full copies of the Website's articles.

9. At all times since 2005, the Website registration process has been designed to require – and has required – that users agree to the User Agreement to complete the registration process. HighBeam and Cengage can only – and have only – charged the credit cards of subscribers to the Website, i.e., users who completed the Website registration process.



ROBYN DOCHERTY

Sworn to before me this  
15 day of June, 2012.



Annette Fernholz  
Notary Public

